IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO Nos. 558 of 2000 and 99 of 2001.

Decided on : 23.10.2006.

---

1. FAO No. 558 of 2000.

United India Insurance Co. .....Appellant.

VERSUS

Ram Bhadur & anr. .....Respondents.

For the Appellant : Mr. Anup Rattan, Advocate vice Mr. Ravi Bakshi, Advocate.

For the Respondents : Mr. Raman Sethi, Advocate, for Respondent No.1.

---

2. FAO No. 99 of 2001.

Ram Bhadur ..... Appellant.

VERSUS

Vijay Kumar Negi & anr. .....Respondents.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

***Whether approved for reporting?*[1]**

For the Appellant : Mr. Raman Sethi, Advocate.

For the Respondent : Mr. Anup Rattan, Advocate vice Mr. Ravi Bakshi, Advocate, for respondent No.2.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. These two appeals, one by the Insurance Company and the other by the claimant are directed against the same award, i.e. award dated 16.8.2000 of the Motor Accident Claims Tribunal. Ram

---

Whether the reporters of the local papers may be allowed to see the Judgment?

Bhadur, appellant in FAO No. 99 of 2001, hereinafter called claimant, filed a petition, under Section 166 of the Motor Vehicles Act, claiming compensation for the death of his wife, who allegedly died in an accident involving a motor-cycle, owned and driven by Vijay Kumar Negi, respondent in both the cases. It was alleged that the accident had taken place due to the rash or negligent driving of the motor-cycle. The deceased was stated to be 35 years of age at the time of her death. She was alleged to be engaged as labourer and earning Rs.2500/- per month. The motor-cycle at the relevant time was insured with United India Insurance Company, appellant in FAO No. 558 of 2000.

3. Claim petition was contested. Respondent Vijay Kumar Negi denied that the accident had taken place due to the rash or negligent driving of the motor-cycle by him. The Insurance Company denied its liability alleging that the motor-cycle was being driven in violation of the rules and the terms and conditions of the policy without specifying as to which rules or which conditions of the policy had been violated.

4. The Motor Accident Claims Tribunal held that the cause of accident was rash or negligent driving of the motor-cycle by respondent Vijay Kumar Negi, who also was the owner of the motor-cycle. The Tribunal further held that there was comprehensive insurance cover in regard to the motor-cycle and so it (the insurance company) was liable to satisfy the claim for the death of the lady. The Tribunal awarded Rs.1,00,000/- by way of compensation.

5. Appeal No.99 of 2001 has been filed by the claimant, the husband of the deceased lady. He is aggrieved by the quantum of compensation. The second appeal is filed by the Insurance Company. It is aggrieved by the order of the Tribunal fastening the liability on it.

6. I have heard the counsel for both the parties. In the appeal filed by Insurance Company, it is alleged that the man, who was driving the vehicle, namely Vijay Kumar Negi, did not possess a valid driving licence on the date of the accident and that this fact is borne out from Ex. R-3, copy of the driving licence. I have gone through the written reply filed by the appellant – insurance company. No plea had been raised by the Insurance Company that Vijay Kumar Negi, who was driving the motor-cycle at the relevant time did not possess a valid and effective driving licence. Further more, even though the date of the issue of the licence is apparently recorded as 18.3.2000, there is another date mentioned on the licence, which was 12.2.1995. May be that prior to the date of the issue of the licence Ex. R-2, Vijay Kumar Negi was holding another licence, which was issued on 12.2.1995 and the present licence was issued on the basis of that licence. In any case, when the plea had not been raised in the reply by the Insurance Company that Vijay Kumar Negi did not possess a valid and effective driving licence nor was this plea raised at any other stage before the Tribunal, it is too late in the date for the insurance company to come up with this plea.

7. For the foregoing reasons, the appeal filed by the Insurance Company is dismissed.

8. As regards the appeal by the claimant, the only evidence that is on the record is the testimony of the claimant himself. The claimant stated that on account of the death of Shitla Devi his wife, his earnings have been reduced by Rs. 2,000/- per month. He has testified that the deceased used to work as a labourer and earn around Rs.2,000/- per month. The testimony of the claimant to this effect has not been rebutted. So it is assumed that the income of the deceased was Rs.2,000/- per month. It is not the case of the claimant that he was dependent upon the deceased for his livelihood. But he is entitled to compensation on account of loss to the estate. The deceased can legitimately be presumed to be spending Rs.1200/- per month on her own maintenance, i.e. food, clothes and other necessities of life out of her earnings. Therefore, the datum figure for working out the loss to the estate comes to Rs. 800/- per month. Looking to her age, multiplier of 13 years is adopted. By adopting this multiplier, the compensation payable on this count comes to Rs. 1,24,800/-, i.e. Rs. 1.25,000/-. In addition to the aforesaid amount, the claimant is entitled to Rs. 25,000/- on account of conventional damages. Thus the claimant is entitled to compensation of Rs. 1,50,000/-.

9. For the foregoing reasons, the appeal filed by the appellant- claimant is allowed and it is ordered that the claimant-appellant is entitled to Rs. 1,50,000/- as compensation with interest at the rate of 9% per annum from the date of the petition to the date of deposit of the compensation money.

10. The insurance company is directed to deposit the amount of enhanced compensation of Rs. 50,000/- together with interest on this enhanced amount as also on the compensation awarded by the Tribunal, in terms of this judgement, within eight weeks from today.

11. Both the appeals stand disposed of.

October 23, 2006. **(Surjit Singh)**
(*Hem*) **Judge.**